No. 17-1091

In the Supreme Court of the United States

TYSON TIMBS AND A 2012 LAND ROVER LR2,

Petitioners,

v.

STATE OF INDIANA,

Respondent.

ON WRIT OF CERTIORARI TO THE INDIANA SUPREME COURT

BRIEF OF THE AMERICAN CIVIL LIBERTIES UNION, THE R STREET INSTITUTE, THE FINES AND FEES JUSTICE CENTER, AND THE SOUTHERN POVERTY LAW CENTER AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

CHARLES DUAN
NILA BALA
R STREET INSTITUTE
1212 New York Ave. NW, Suite 900
Washington, DC 20005

LISA FOSTER
JOANNA WEISS
FINES AND FEES JUSTICE CENTER
185 West Broadway, C-538
New York, NY 10013

SAMUEL BROOKE
DANIELLE E. DAVIS
THE SOUTHERN POVERTY LAW CENTER
400 Washington Ave.
Montgomery, AL 36104

NUSRAT J. CHOUDHURY
Counsel of Record
ORION DANJUMA
AMRKETA MATHAI
DENNIS D. PARKER
MARIANA KOVEL
EZEKIEL EDWARDS
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
125 Broad Street, 18th Floor
New York, NY 10004
(212) 549-2500
nchoudhury@aclu.org

DAVID COLE
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
915 15th St. NW
Washington, DC 20005

Counsel for Amici Curiae

TABLE OF CONTENTS

TABLE OF AUTHORITIES iii

SUMMARY OF THE ARGUMENT 2

ARGUMENT 4

I. STATE AND LOCAL COURTS AND LAW ENFORCEMENT HAVE DRAMATICALLY INCREASED FINES, FEES, AND FORFEITURES IN ORDER TO RAISE GOVERNMENT REVENUE AND FUND JUSTICE SYSTEMS. 4

II. UNCHECKED FINES, FEES, AND FORFEITURES PROFOUNDLY HARM IMPOVERISHED AND LOW-INCOME INDIVIDUALS, FAMILIES, AND COMMUNITIES 11

III. UNCHECKED FINES, FEES, AND FORFEITURES UNDERMINE PUBLIC SAFETY BY CREATING INCENTIVES FOR ABUSE AND DIVERTING JUSTICE-SYSTEM RESOURCES TOWARD REVENUE COLLECTION. 22

a. The Risk of Abuse is High Because Financial Incentives Push State and Local Officials to Maximize Revenue From Fines, Fees, and Forfeitures. 22

b. Unchecked Fines, Fees, and Forfeitures Promote Recidivism. 28

IV. THE EXCESSIVE FINES CLAUSE PROVIDES A CRUCIAL AND NECESSARY CHECK AGAINST ABUSIVE FINES, FEES, AND FORFEITURES IMPOSED BY STATE AND LOCAL GOVERNMENT. 30

CONCLUSION 40

APPENDIX: States with Documented Incarceration of Individuals with Unpaid Court Fines and Fees ... 1a

TABLE OF AUTHORITIES

Cases

Austin v. United States,
509 U.S. 602 (1993) 34
Bearden v. Georgia,
461 U.S. 660 (1983) 18, 33
Brown v. Lexington County, South Carolina,
No. 3:17-cv-1426-MBS, 2018 WL 1556189 (D.S.C. Mar. 29, 2018) 18
Browning-Ferris Industries of Vermont, Inc. v. Kelco Disposal, Inc.,
492 U.S. 257 (1989) 32
Chicago, B. & Q.R. Co. v. City of Chicago,
166 U.S. 226 (1897) 34
Class Action Second Amended Complaint, *Brown v. Lexington County, South Carolina*, No. 3:17-cv-1426-MBS (D.S.C. filed June 1, 2017) 18
Complaint, *Kennedy v. Biloxi*, No. 1:15-cv-348-HSO-JCG (S.D. Miss. Oct. 21, 2015), ECF No.1 25
Duncan v. Louisiana,
391 U.S. 145 (1968) 31
Fowler v. Johnson, No. 17-11441, 2017 WL 6540926 (E.D. Mich. Dec. 17, 2017) 17
Gideon v. Wainwright,
372 U.S. 335 (1963) 32
Harmelin v. Michigan,
501 U.S. 957 (1991) 34
Ingraham v. Wright,
430 U.S. 651 (1977) 33

Leonard v. Texas,
137 S. Ct. 847 (2017) 20
Mapp v. Ohio,
367 U.S. 643 (1961) 32
McDonald v. City of Chicago, Ill.,
561 U.S. 742 (2010) 31
Order and Reasons, *Cain v. City of New Orleans*, No. 2:15-cv-04479-SSV-JCW (E.D. La. Aug. 2, 2018), ECF No. 318. 24
Ray v. Judicial Correction Services,
No. 2:12-CV-02819-RDP, 2013 WL 5428395 (N.D. Ala. Sept. 26, 2013) 25
Robinson v. California,
370 U.S. 660 (1962) 33
Rodriguez v. Providence Community Corrections,
155 F. Supp. 3d 758 (M.D. Tenn. Dec. 17, 2015) ..25
Schilb v. Kuebel,
404 U.S. 357 (1971) 33
Second Amended Complaint, *Morrow v. City of Tenaha*,
No. 2:08-cv-288-JRG (E.D. Tex. June 30, 2009), ECF No. 43 ..... 21, 25
United States v. 6380 Little Canyon Road.,
59 F.3d 974 (9th Cir. 1995) 37
United States v. Bajakajian,
524 U.S. 321 (1998) 31
United States v. Fogg,
666 F.3d 13 (1st Cir. 2009) 37
United States v. King,
231 F. Supp. 3d 872 (W.D. Okla. 2017) 38

United States v. Levesque,
546 F.3d 78 (1st Cir. 2008) 37
United States v. Lippert,
148 F.3d 974 (8th Cir. 1998) 38
United States v. Seher,
562 F.3d 1344 (11th Cir. 2009) 38
United States v. Smith,
656 F.3d 821 (8th Cir. 2011) 38
United States v. Viloski,
814 F.3d 104 (2d Cir. 2016) 37
Williams v. Illinois,
399 U.S. 241 (1970) 33

Statutes

42 U.S.C. § 1382(e)(4)(A)(ii) (2018) 16
42 U.S.C. § 1437d(l)(9) (2013). 16
42 U.S.C. § 608(a)9(A) (2012) 16
7 U.S.C. § 2015(k)(1) (2015). 16
Ala. Code 1975 § 15-12-21 (2018) 10
Fla. Stat. Ann § 28.246(6) (2013) 14
Fla. Stat. Ann § 938.27(8) 9
N.H. Rev. Stat. § 604-A:9 (2018) 10
Tenn. Code Ann. § 67-4-602 (2016) 5

Other Authorities

2011–2012 Conference of State Court Administrators, *Courts are Not Revenue Centers* (2012) 26
Alabama Appleseed & Southern Poverty Law Center, *Forfeiting Your Rights: How Alabama's Profit-*

Driven Civil Asset Forfeiture Scheme Undercuts Due Process and Property Rights, https://www.splcenter.org/sites/default/files/com_civil_asset_forfeiture_report_finalnocrops.pdf.....22
Alexes Harris et al., *Monetary Sanctions in the Criminal Justice System*, Monetary Sanctions (April 2017), http://www.monetarysanctions.org/wp-content/uploads/2017/04/Monetary-Sanctions-Legal-Review-Final.pdf.....14, 19
Alicia Bannon et al., *Criminal Justice Debt: A Barrier to Reentry*, Brennan Center for Justice (2010), https://www.brennancenter.org/sites/default/files/legacy/Fees%20and%20Fines%20FINAL.pdf.. passim
American Association of Motor Vehicle Administrators, *Best Practices Guide to Reducing Suspended Drivers* (2013), https://www.aamva.org/Suspended-and-Revoked-Drivers-Working-Group 27
American Bar Association, Resolution 302 and Report (Aug. 8–9, 2011), https://www.americanbar.org/content/dam/aba/directories/policy/2011_am_302.authcheckdam.pdf.....8
American Civil Liberties Union, *In for a Penny: The Rise of America's New Debtors' Prisons* (October 2010), https://www.aclu.org/files/assets/InForAPenny_web.pdf 18
Back on the Road California et al., *Stopped, Fined, Arrested: Racial Bias in Policing and Traffic*

Courts in California (2016), http://ebclc.org/wp-content/uploads/2016/04/Stopped_Fined_Arrested_BOTRCA.pdf 21
Brief *Amici Curiae* of Eighth Amendment Scholars In Support of Neither Party 32
Civil Rights Division, U.S. Department of Justice, *Investigation of the Ferguson Police Department* (2015), https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf ..... passim
Conference of State Court Administrators, *Standards Relating to Court Costs: Fees, Miscellaneous Charges and Surcharges and a National Survey of Practices* (June 1986), https://cdm16501.contentdm.oclc.org/digital/collection/financial/id/81 8
Dan Kopf, *The Overlooked Reason Why Some Cities Have Strained Relationships With Cops*, Business Insider (July 11, 2016, 10:01 AM), https://www.businessinsider.com/reason-for-strained-relationship-with-police-2016-7 7
Debtors' Prison Settlement: Aurora Cancels Debt, Withdraws Warrants, and Repays James Fisher for Excessive Payments to Municipal Court, ACLU of Colorado (Jan. 13, 2017), https://aclu-co.org/debtors-prison-settlement-aurora-cancels-debt-withdraws-warrants-repays-james-fisher-excessive-payments-municipal-court/ 15

Dick M. Carpenter II et al., *Policing for Profit: The Abuse of Civil Asset Forfeiture* (Inst. for Just. 2d ed. 2015), https://ij.org/wp-content/uploads/2015/11/policing-for-profit-2nd-edition.pdf.....5, 11, 25

Harvard Law School Criminal Justice Policy Program, *Confronting Criminal Justice Debt: A Guide for Policy Reform* (September 2016), http://cjpp.law.harvard.edu/assets/Confronting-Crim-Justice-Debt-Guide-to-Policy-Reform-FINAL.pdf.....5

How Crime Pays: the Unconstitutionality of Modern Civil Asset Forfeiture as a Tool of Criminal Law Enforcement, Harvard Law Review Note, 131 Harv. L. Rev. 2387 (June 8, 2018), https://harvardlawreview.org/wp-content/uploads/2018/06/2387-2408_Online.pdf...28

Human Rights Watch, *Profiting from Probation: America's "Offender-Funded" Probation Industry* (2014), https://www.hrw.org/sites/default/files/reports/us0214_ForUpload_0.pdf.....14, 24, 25

Joe Shapiro, *Supreme Court Ruling Not Enough to Prevent Debtors' Prisons*, National Public Radio (May 21, 2014, 5:01 AM), https://www.npr.org/2014/05/21/313118629/supreme-court-ruling-not-enough-to-prevent-debtors-prisons.....6

Kahryn Riley, *Michigan's Trial Courts Have a Major Funding Problem*, Mackinac Center for Public Policy (August 10, 2018),

https://www.mackinac.org/michigans-trial-courts-have-a-major-funding-problem. 10
Karin D. Martin et al., *Monetary Sanctions: Legal Financial Obligations in US systems of Justice*, 1 Annual Review of Criminology 471 (2018) 12
Karin D. Martin et al., *Shackled to Debt: Criminal Justice Financial Obligations and the Barriers to Re-entry They Create*, Harvard Kennedy School & National Institute of Justice (Jan. 2017), https://www.ncjrs.gov/pdffiles1/nij/249976.pdf. 4
Karis Ann-Yu Chi, *Follow the Money: Getting to the Root of the Problem with Civil Asset Forfeiture in California*, 90 Cal. L. Rev. 1635 (2002) 11
Katherine Beckett & Alexes Harris, *On Cash and Conviction: Monetary Sanctions as Misguided Policy*, 10 Criminology & Pub. Pol. 509 (2011), http://criminology.fsu.edu/wp-content/uploads/volume-10-issue-31.pdf 12
Lawyers' Committee for Civil Rights et. al., *Not Just a Ferguson Problem: How Traffic Courts Drive Inequality in California* (2016), https://www.lccr.com/wp-content/uploads/Not-Just-a-Ferguson-Problem-How-Traffic-Courts-Drive-Inequality-in-California-4.8.15.pdf 20
MacArthur Justice Center Initiated Demands that Led to Mississippi Youth Court Judge Resigning, The University of Mississippi School of Law (Oct. 26, 2017), https://law.olemiss.edu/macarthur-justice-center-initiated-demands-that-led-to-mississippi-youth-court-judge-resigning 24

Mario Salas & Angela Ciolfi, *Driven By Dollars: A State-by-State Analysis of Driver's License Suspension Laws for Failure to Pay Court Debt*, Legal Aid Justice Center (2017), https://www.justice4all.org/wp-content/uploads/2017/09/Driven-by-Dollars.pdf ... 16

Mark Flatten, *City Court: Money, Pressure and Politics Make it Tough to Beat the Rap* (2017) 7

Mathilde Laisne et al., *Past Due: Examining the Costs and Consequences of Charging for Justice in New Orleans*, Vera Institute for Justice (2017), https://storage.googleapis.com/vera-web-assets/downloads/Publications/past-due-costs-consequences-charging-for-justice-new-orleans/legacy_downloads/past-due-costs-consequences-charging-for-justice-new-orleans.pdf. 10

Maura Ewing, *Want to Clear Your Record? It will Cost You $450*, The Marshall Project (June 1, 2016), https://www.themarshallproject.org/2016/05/31/want-to-clear-your-record-it-ll-cost-you-450#.8JBZ1nHWG 6

New Jersey Courts, *Report of the Supreme Court Committee on Municipal Court Operations, Fines, and Fees* (June 2018), https://www.njcourts.gov/courts/assets/supreme/reports/2018/sccmcoreport.pdf 7, 13

NPR, Brennan Center for Justice & National Center For State Courts, *State-By-State Court Fees*, NPR (May 19, 2014, 4:02 PM),

http://www.npr.org/2014/05/19/312455680/state-by-state-court-fees 9

On Views of Race and Inequality, Blacks and Whites Are Worlds Apart, Pew Research Center (June 27, 2016), http://www.pewsocialtrends.org/2016/06/27/on-views-of-race-and-inequality-blacks-and-whites-are-worlds-apart/ 21

Pew Charitable Trust Public Safety Performance Project, *Public Safety, Public Spending: Forecasting America's Prison Population 2007–2011* (2007), http://www.pewtrusts.org/~/media/legacy/uploadedfiles/wwwpewtrustsorg/reports/state-based_policy/psppprisonprojections0207pdf 9

Rakesh Kochhar & Richard Fry, *Wealth Inequality Has Widened Along Racial, Ethnic Lines Since End of Great Recession*, Pew Research Center (Dec. 12, 2014), http://www.pewresearch.org/fact-tank/2014/12/12/racial-wealth-gaps-greatrecession 21

Rebecca Goldstein et al., *Exploitative Revenues, Law Enforcement, and the Quality of Government Service* (2017), http://www.law.nyu.edu/sites/default/files/upload_documents/YOU_policing.pdf 26

Reis Thebault, *In D.C. No More License Suspensions for Drivers With Unpaid Tickets*, Wash. Post (July 12, 2018), https://www.washingtonpost.com/local/dc-politics/in-dc-no-more-suspensions-for-drivers-

with-unpaid-tickets/2018/07/12/a72cf13a-85e0-11e8-8553-a3ce89036c78_story.html?utm_term=.b37244c13f1d 17

Robert O'Harrow et al., *Asset Seizures Fuel Police Spending*, Washington Post (Oct. 11, 2014), https://www.washingtonpost.com/sf/investigative/2014/10/11/asset-seizures-fuel-police-spending/?noredirect=on&utm_term=.d985456fadcc 26

Sarah Stillman, *Get Out of Jail, Inc.: Does the Alternatives-to-Incarceration Industry Profit from Injustice?*, The New Yorker (Jun. 23, 2014), https://www.newyorker.com/magazine/2014/06/23/get-out-of-jail-inc 13

Sarah Stillman, *Taken*, The New Yorker (Aug. 12 and 19, 2013), https://www.newyorker.com/magazine/2013/08/12/taken 20, 26, 30

SCHR Continues to Challenge LaGrange, GA, Policies That Restrict Access to Basic Utility Services, Southern Center for Human Rights (March 26, 2018), https://blog.schr.org/2018/03/26/schr-continues-to-challenge-lagrange-ga-policies-that-restrict-access-to-basic-utility-services/ 16

SNJ Today Staff, *New Jersey Minimum Wage Set to Increase in 2018*, SNJ Today (May 30, 2018, 5:35 PM), http://www.snjtoday.com/story/37160834/new-jersey-minimum-wage-set-to-increase-in-2018 13

Superior Court of California, County of San Diego, *How the Amount Due is Calculated on Citations* (April 2013), http://www.sdcourt.ca.gov/pls/portal/docs/PAGE/SDCOURT/GENERALINFORMATION/FORMS/ADMINFORMS/ADM295.PDF 6

The Council of State Governments & The National Reentry Resource Center, *Making People's Transition from Prison and Jail to the Community Safe and Successful: A Snapshot of National Progress in Reentry* (2017), https://csgjusticecenter.org/wp-content/uploads/2017/06/6.12.17_A-Snapshot-of-National-Progress-in-Reentry.pdf 28

The Council of State Governments, *Reentry Matters: Strategies and Successes of Second Chance Act Grantees Across the United States* (Nov. 2013), https://csgjusticecenter.org/wp-content/uploads/2013/11/ReentryMatters.pdf 29

Twanda Marshinda Brown, *I Was Taken From My Family and Jailed for 57 Days Because I Am Poor*, American Civil Liberties Union (June 1, 2017), https://www.aclu.org/blog/smart-justice/sentencing-reform/i-was-taken-my-family-and-jailed-57-days-because-i-am-poor 19

INTERESTS OF AMICI CURIAE[1]

Amici curiae are non-profit organizations that share a common concern that state and local governments pursue criminal and civil fines, fees, and forfeitures at alarmingly high rates. Amici have a particular interest in this case because the unprecedented rise in fines, fees, and forfeitures has generated financial incentives for abuse, undermined public safety, and has had devastating impacts on low-income people, their families, and society at large. Amici believe the protections of the Eighth Amendment's Excessive Fines Clause are urgently needed to guard against these harms, and write to encourage this Court to hold that the Excessive Fines Clause is enforceable against the States to ensure that people in Indiana, like people elsewhere in the country, enjoy the full protections granted to them by the Eighth Amendment.

The American Civil Liberties Union ("ACLU") is a nationwide, non-profit, non-partisan organization of more than 1.6 million members dedicated to defending the principles of liberty and equality embodied in the U.S. Constitution and our nation's civil rights laws. Founded more than 90 years ago, the ACLU has participated in numerous cases before this Court involving the scope and application of constitutional rights, both as direct counsel and as amicus curiae. Through its Racial

---

[1] All parties have consented to the filing of this brief. Amici affirm that no counsel for any party authored this brief in whole or in part and that no person other than amici made a monetary contribution to its preparation or submission.

Justice Program, the ACLU engages in nationwide litigation and advocacy to enforce and protect the constitutional rights of impoverished people against unlawful fine, fee, and forfeiture practices.

The R Street Institute is a non-profit, non-partisan, public-policy research organization. R Street's mission is to engage in policy research and educational outreach that promotes free markets, as well as limited yet effective government, including properly calibrated legal and regulatory frameworks that support economic growth and individual liberty.

The Fines and Fees Justice Center ("FFJC") is a national center for advocacy, information, and collaboration on effective solutions to the unjust and harmful imposition and enforcement of fines and fees in state and local courts. FFJC's mission is to create a justice system that treats individuals fairly, ensures public safety, and is funded equitably.

The Southern Poverty Law Center ("SPLC") has provided pro bono civil rights representation to low-income persons in the Southeast since 1971, with particular focus on combating unlawful discrimination and ending poverty. The SPLC provides educational materials, engages in policy reform, and develops litigation to minimize the burdens placed on the poor, to ensure meaningful access to social safety nets, and to enable upward mobility.

SUMMARY OF THE ARGUMENT

Whether the Excessive Fines Clause of the Eighth Amendment is incorporated against the States is a matter of vital importance to millions of Americans across the country. Amici agree with the

petitioners that the right to be free from excessive fines, like the rights to be free from excessive bail and cruel and unusual punishment, is deeply rooted in American traditions. This right should be incorporated through the Fourteenth Amendment to apply to the States, as most lower courts have already held. In this brief, amici seek to provide concrete data about the growth in exorbitant fines, fees, and forfeitures across the country—and the resulting abuse, harms to public safety, and detrimental impact on individuals, families, and society at-large. Until this Court declares that right incorporated, this important check will be unavailable against state and local practices in those jurisdictions that have declined to incorporate its protections.

The United States has experienced an unprecedented and extraordinary rise in fines, fees, and forfeitures over the past three decades. Driven by a quest to generate revenue and to fund state and local justice systems, the explosion of fines, fees, and forfeitures has buried people under mountains of accumulating debt. Because poor and low-income people often cannot immediately pay steep fines and fees or sustain asset forfeiture, these economic burdens can severely disrupt their ability to provide for themselves and their families, and lead to a host of collateral harms—wage garnishment, loss of employment and housing, poor credit ratings, driver's license suspension, incarceration, prohibitions on the right to vote, and even family separation. The increasing use of fines, fees, and forfeitures to generate revenue also perverts the goals of the justice system. Financial incentives driving the use of these penalties contribute to abuse

and undermine reintegration of people involved in the criminal justice system into families and communities.

Though not all of these practices would rise to the level of a violation of the Excessive Fines Clause, the clause represents an essential safeguard against severe monetary sanctions and asset seizures. Properly construed, the clause requires consideration of both the gravity of the offense and whether a monetary sanction or forfeiture will deprive individuals of their livelihood. Incorporation of the Excessive Fines Clause is necessary to check abuse of fines, fees, and forfeitures throughout the country.

ARGUMENT

I. STATE AND LOCAL COURTS AND LAW ENFORCEMENT HAVE DRAMATICALLY INCREASED FINES, FEES, AND FORFEITURES IN ORDER TO RAISE GOVERNMENT REVENUE AND FUND JUSTICE SYSTEMS.

Today millions of people nationwide face debilitating financial burdens from civil and criminal fines, fees, and forfeitures. As of 2017, 10 million people owed more than $50 billion in criminal fines, fees, and forfeitures alone.[2] Several sources contribute to this burgeoning debt: "fines" imposed as

---

[2] Karin D. Martin et al., *Shackled to Debt: Criminal Justice Financial Obligations and the Barriers to Re-entry They Create*, Harvard Kennedy School & Nat'l Inst. of Justice 5 (Jan. 2017), https://www.ncjrs.gov/pdffiles1/nij/249976.pdf.

punishment for an offense at any level—whether a civil or criminal infraction, misdemeanor, or felony;[3] "fees" that seek to raise revenue or recoup government costs from people sentenced for civil or criminal infractions, misdemeanors, or felonies;[4] and civil forfeitures, which allow seizure of property or assets without formal criminal charges being filed against the property owner.[5] The dramatic rise in these financial penalties is fueled by powerful incentives to raise revenue for government coffers and to recoup the costs of government services from people involved in the justice system. The Excessive Fines Clause has a crucial role to play in checking the abuses that this conflict of interest can prompt.

The past three decades have witnessed a striking expansion in state and local governments' reliance on fines and fees to generate public revenue. Since 2010, 48 states have increased civil and

---

[3] *Id.* at 2.

[4] The term "fees" includes "surcharges" and "litigation taxes"—financial obligations consisting of either a flat fee or a percentage added to fines or fees to fund a particular government function or raise general revenue. *See* Harvard Law School Criminal Justice Policy Program, *Confronting Criminal Justice Debt: A Guide for Policy Reform* 6, (September 2016), http://cjpp.law.harvard.edu/assets/Confronting-Crim-Justice-Debt-Guide-to-Policy-Reform-FINAL.pdf (describing surcharges); *see, e.g.*, Tenn. Code Ann. § 67-4-602 (2016) (describing various litigation taxes).

[5] *See* Dick M. Carpenter II et al., *Policing for Profit: The Abuse of Civil Asset Forfeiture* 5 (Inst. for Just. 2d ed. 2015), https://ij.org/wp-content/uploads/2015/11/policing-for-profit-2nd-edition.pdf.

criminal fees.[6] Arizona, Louisiana, Ohio, and Texas instituted new fees and raised existing fees to address 2010 budget shortfalls.[7] In 2012, the Tennessee legislature established a $450 criminal record expungement fee for the principal purpose of raising revenue for the state general fund.[8] In California, the fine for a red light violation is only $100, but $390 in additional fees are imposed[9] and distributed among 18 different state and county funds ranging from the Fish and Game Preservation Fund to the Emergency Medical Transportation Fund.[10]

---

[6] Joe Shapiro, *Supreme Court Ruling Not Enough to Prevent Debtors' Prisons*, National Public Radio (May 21, 2014, 5:01 AM), https://www.npr.org/2014/05/21/313118629/supreme-court-ruling-not-enough-to-prevent-debtors-prisons (describing results of yearlong investigation).

[7] *Shackled to Debt*, *supra* note 2, at 6 (internal citation omitted).

[8] Maura Ewing, *Want to Clear Your Record? It will Cost You $450*, The Marshall Project (June 1, 2016), https://www.themarshallproject.org/2016/05/31/want-to-clear-your-record-it-ll-cost-you-450#.8JBZ1nHWG.
Tennessee legislators sought to raise $7 million by directing 55% of the proceeds of each criminal records expungement fee to the state general fund. *Id.*

[9] Super. Ct. of Cal., Cty. Of San Diego, *How the Amount Due is Calculated on Citations*, SCSD ADM-295 (April 2013), http://www.sdcourt.ca.gov/pls/portal/docs/PAGE/SDCOURT/GENERALINFORMATION/FORMS/ADMINFORMS/ADM295.PDF.

[10] California State Auditor Report 2017–126, *Penalty Assessment Funds: California's Traffic Penalties and Fees Provide Inconsistent Funding for State and County Programs and Have a Significant Impact on Drivers* 5 (April 2018), https://www.bsa.ca.gov/pdfs/reports/2017-126.pdf (describing

Perhaps because they are politically easier to impose than generally applicable taxes, state and local governments nationwide increasingly depend heavily on fines and fees as a source of general revenue. In 2017, New Jersey municipal courts collected more than $400 million in fines and fees, with more than half of that amount funneled to the general funds of municipalities and a significant portion directed to state and county governments.[11] Similarly, in 2016, more than half of the $167 million raised by Arizona municipal courts in fines and fees funded general municipal operations.[12] Among the 100 cities in the United States that generated the highest proportion of municipal revenue from fines and fees in 2012, between 7.2% and 30.4% of total municipal revenue was derived from fine and fee collection.[13] In comparison, during the previous year,

---

fees imposed on top of traffic offenses encompassing red light violation and where fee revenue is directed).

[11] New Jersey Courts, *Report of the Supreme Court Committee on Municipal Court Operations, Fines, and Fees*, 12 (June 2018), https://www.njcourts.gov/courts/assets/supreme/reports/2018/sccmcoreport.pdf.

[12] Mark Flatten, *City Court: Money, Pressure and Politics Make it Tough to Beat the Rap*, Goldwater Institute, 6–7 (2017) (reporting that "[r]oughly half" of the $166.7 million raised by Arizona municipal courts in 2016 was directed to municipal general funds to "support general city operations").

[13] Dan Kopf, *The Overlooked Reason Why Some Cities Have Strained Relationships With Cops*, Business Insider (July 11, 2016, 10:01 AM), https://www.businessinsider.com/reason-for-strained-relationship-with-police-2016-7 (discussing data from the 2012 U.S. Census of Governments: State and Local Finances).

Ferguson, Missouri—a town that has received nationwide attention for municipal court practices driven by a quest for revenue—relied on fines and fees for 13% of its general fund revenue.[14]

Criminal justice fees have skyrocketed to pay for an expanding justice system by collecting money from those prosecuted or punished. Since the 1980s, public funding for courts has decreased while the number of people involved in the criminal legal system has ballooned. In 1986, the Conference of State Court Administrators noted the proliferation of "[f]ees and miscellaneous charges . . . as [a] method to meet demands for new programs without diminishing general tax revenues."[15] Many state court systems witnessed a 10% to 15% reduction in funding from 2007 to 2010 as a result of budget cuts.[16] In Georgia, court funding fell by 25% from 2009 to 2011.[17] At the same time, between 1980 and

---

[14] Civil Rights Division, U.S. Dep't of Justice, *Investigation of the Ferguson Police Department* 9 (2015) (hereinafter "Dep't of Justice Ferguson Report"), https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf.

[15] Conference of State Court Administrators, *Standards Relating to Court Costs: Fees, Miscellaneous Charges and Surcharges and a National Survey of Practices*, 4–5 (June 1986), https://cdm16501.contentdm.oclc.org/digital/collection/financial/id/81.

[16] American Bar Association, Resolution 302 and Report 2 (Aug. 8–9, 2011), https://www.americanbar.org/content/dam/aba/directories/policy/2011_am_302.authcheckdam.pdf.

[17] *Id.* at 3.

2005, the number of incarcerated people in the United States increased from 500,000 to 2.2 million people.[18] The number of people on parole or probation also swelled from 1.34 million in 1980 to 4.95 million in 2005.[19]

Fees are being used to bridge the gulf between diminished public funding and the costs of an expanding justice system. Courts and related state and local agencies collect a wide variety of fees, including court costs and "user fees," which seek to recoup outlays for everything from warrant issuance, jail booking, and public defenders, to probation and incarceration.[20] For example, Florida imposes a "prosecution fee" ranging from $50 to $100 or more on all criminal cases, which is used to fund State Attorney's offices.[21] As of 2014, over 40 states charged public defender fees.[22] Numerous states

---

[18] Pew Charitable Trust Public Safety Performance Project, *Public Safety, Public Spending: Forecasting America's Prison Population 2007–2011*, at 2 (2007), http://www.pewtrusts.org/~/media/legacy/uploadedfiles/wwwpewtrustsorg/reports/state-based_policy/psppprisonprojections0207pdf.

[19] *Id.*

[20] Alicia Bannon et al., *Criminal Justice Debt: A Barrier to Reentry*, Brennan Center for Justice 7 (2010), https://www.brennancenter.org/sites/default/files/legacy/Fees%20and%20Fines%20FINAL.pdf.

[21] *See* Fla. Stat. Ann. § 938.27(8) (mandating prosecution fee of at least $50 for misdemeanor and traffic offenses and at least $100 for felony offenses).

[22] NPR, Brennan Center for Justice & National Center For State Courts, *State-By-State Court Fees*, NPR (May 19, 2014, 4:02 PM), http://www.npr.org/2014/05/19/312455680/state-by-state-court-fees.

impose defender fees even if charges are dismissed or the defendant is acquitted.[23] By statute, Michigan's county courts rely almost entirely on user fees to fund day-to-day expenses.[24] In New Orleans, "[r]evenue from fees helps to fund the municipal and district courts, the district attorney, public defender, and sheriff's office, and other agencies . . . ."[25] A 2007 report recognized that "[a]dministrative assessments on citations fund nearly all of the Administrative Office of the Court's budget in Nevada [and] . . . [i]n Texas, probation fees made up 46% of the Travis County Probation Department's $18.3 million budget in 2006."[26]

Forfeitures by state and local law enforcement have also boomed nationwide. The total amount seized in forfeitures "across 14 states more than doubled from 2002 to 2013."[27] Many seizures come out of civil asset forfeiture programs in which the government secures forfeiture without first obtaining

---

[23] *See, e.g.*, N.H. Rev. Stat. § 604-A:9 (2018); Ala. Code 1975 § 15-12-21 (2018).

[24] Kahryn Riley, *Michigan's Trial Courts Have a Major Funding Problem*, Mackinac Center for Public Policy (August 10, 2018), https://www.mackinac.org/michigans-trial-courts-have-a-major-funding-problem.

[25] Mathilde Laisne et al., *Past Due: Examining the Costs and Consequences of Charging for Justice in New Orleans*, Vera Institute for Justice (2017), https://storage.googleapis.com/vera-web-assets/downloads/Publications/past-due-costs-consequences-charging-for-justice-new-orleans/legacy_downloads/past-due-costs-consequences-charging-for-justice-new-orleans.pdf.

[26] *Shackled to Debt*, *supra* note 2, at 6.

[27] Carpenter, *supra* note 5, at 5.

a conviction, and at times without even filing criminal charges.[28] Most state civil forfeiture laws "give law enforcement agencies a financial stake in forfeitures by awarding them some, if not all, of the proceeds."[29] The U.S. Department of Justice's Equitable Sharing Program pushes forfeitures rates even higher by allowing participating local law enforcement agencies to team up with federal authorities and skirt more restrictive state laws in order to retain up to 80% of proceeds from forfeited assets.[30] Between 2000 and 2013, annual payments from the program to state and local law enforcement more than tripled—with a total of $4.7 billion paid to state and local agencies.[31]

II. UNCHECKED FINES, FEES, AND FORFEITURES PROFOUNDLY HARM IMPOVERISHED AND LOW-INCOME INDIVIDUALS, FAMILIES, AND COMMUNITIES.

One reason state and local governments have shifted from generally applicable taxes to fines, fees, and forfeitures to raise revenue is that the latter are easier to implement, precisely because they are

---

[28] Karis Ann-Yu Chi, *Follow the Money: Getting to the Root of the Problem with Civil Asset Forfeiture in California*, 90 Cal. L. Rev. 1635, 1673 (2002). From 1997 to 2013, federal civil forfeitures outpaced criminal forfeitures, which require a criminal conviction to deprive people of their property. Carpenter, *supra* note 5, at 5.

[29] *Id.* at 11.

[30] *Id.* at 6.

[31] *Id.*

concentrated on the most vulnerable—and least politically powerful—individuals and communities. These sanctions have driven people deeper into cycles of poverty, debt, and continued criminal justice involvement. Those who cannot immediately pay often incur additional penalties, court summons, collection efforts, driver's license suspension, and even incarceration.[32] These burdens can amount to the loss of livelihood that the Excessive Fines Clause was designed to forestall.

The majority of people involved in the criminal justice system are indigent and unable to pay the fines and fees that jurisdictions impose.[33] Fines that are manageable for a person of means may be out of reach for an impoverished or low-income person. The piling on of additional fees leads to financial burdens that may be impossible to meet even for a moderate-income person. In New Jersey, for example, the offense of simple marijuana possession carries a $100 fine, but will ultimately lead to the imposition of $1,008 in fines and fees on an indigent person represented by a public defender, due to the addition

---

[32] Karin D. Martin et al., *Monetary Sanctions: Legal Financial Obligations in US systems of Justice*, 1 Annual Review of Criminology 471 (2018).

[33] *See* Bureau of Justice Assistance, U.S. Dep't of Justice, *Contracting for Indigent Defense Services: A Special Report* 3 n.1 (2000), https://www.ncjrs.gov/pdffiles1/bja/181160.pdf (estimating that 60% to 90% of criminal cases nationwide involve indigent defendants); Katherine Beckett & Alexes Harris, *On Cash and Conviction: Monetary Sanctions as Misguided Policy*, 10 Criminology & Pub. Pol. 509, 516 (2011), http://criminology.fsu.edu/wp-content/uploads/volume-10-issue-31.pdf ("Criminal defendants are overwhelmingly poor...").

of a $200 public defender application fee, $33 in court costs, and $675 in fees for specific government funds.[34] A full-time minimum wage worker in New Jersey grosses only $344 per week and would need to work almost a month just to pay that sum.[35]

When faced with excessive fines and fees, impoverished and low-income people are often forced to make impossible choices between meeting basic needs and making payments to avoid further penalties.[36] In Georgia, Thomas Barrett, an indigent man, was sentenced to pay $200 in fines and fees, serve twelve months of probation, wear an ankle monitor, and pay $360 in monthly monitoring fees—

---

[34] New Jersey Courts, *supra* note 11, at 12 (reporting that $675 in additional fees consists of a $500 fee for the Drug Enforcement and Demand Reduction Fund, a $50 lab fee, a $50 fee for Victims of Crime Compensation, and a $75 fee for the Safe Neighborhood Services Fund).

[35] Minimum wage in New Jersey is currently $8.60/hour, which corresponds to $344 in income for a 40-hour work week. *See* SNJ Today Staff, *New Jersey Minimum Wage Set to Increase in 2018*, SNJ Today (May 30, 2018, 5:35 PM), http://www.snjtoday.com/story/37160834/new-jersey-minimum-wage-set-to-increase-in-2018 (reporting New Jersey 2018 hourly minimum wage).

[36] Sarah Stillman, *Get Out of Jail, Inc.: Does the Alternatives-to-Incarceration Industry Profit from Injustice?*, The New Yorker (Jun. 23, 2014), https://www.newyorker.com/magazine/2014/06/23/get-out-of-jail-inc (in survey of sixty people on private probation, "[t]he vast majority of respondents had forgone rent, groceries, medicine, or all three to pay fees to private-probation firms").

all for stealing a $2 can of beer.[37] Mr. Barrett sold his blood plasma each month, skipped meals, and regularly went without laundry detergent and toilet paper, but still could not meet his monthly payment obligations.[38]

Impoverished and low-income people who cannot immediately pay fines and fees often incur significant additional financial penalties—collection fees, interest, non-payment fees, per-payment fees, payment plan set-up fees, probation fees, and warrant fees—that rapidly cause already unmanageable burdens to multiply into impossible sums.[39] Florida allows private debt collectors to charge a 40% surcharge for unpaid fines and fees.[40] Private companies frequently charge $35 to $50 each month to collect money from people on so-called "pay only probation"—probation imposed solely for fine and fee collection.[41] James Fisher of Colorado, an indigent man who struggled with homelessness and unsteady work, was charged $1680 in collection fees stemming from an initial $678 in fines imposed in 2012 for two open container tickets and a citation for

---

[37] Human Rights Watch, *Profiting from Probation: America's "Offender-Funded" Probation Industry* 34 (2014), https://www.hrw.org/sites/default/files/reports/us0214_ForUpload_0.pdf.

[38] *Id.*

[39] Alexes Harris et al., *Monetary Sanctions in the Criminal Justice System*, Monetary Sanctions 14 (April 2017), http://www.monetarysanctions.org/wp-content/uploads/2017/04/Monetary-Sanctions-Legal-Review-Final.pdf.

[40] *See* Fla. Stat. Ann. § 28.246(6) (2013).

[41] Human Rights Watch, *supra* note 37, at 27.

driving without proof of insurance.[42] Even after Mr. Fisher made 19 separate payments over four years totaling $1498—more than double the initial fines—he still owed $860 in fees.[43]

Excessive fines and fees often lead to disastrous consequences. They can damage credit scores and directly compromise access to credit, rental housing, mortgages, automobiles, and employment.[44] They can lead to civil judgments that result in liens, wage garnishment, and tax rebate interception.[45] Garnishment and tax interception, in turn, can dissuade employers from hiring people subjected to such restrictions.[46] Excessive fines and fees can also push impoverished people and their families deeper into poverty by excluding them from public benefits. In many states, failure to pay fines

---

[42] *Debtors' Prison Settlement: Aurora Cancels Debt, Withdraws Warrants, and Repays James Fisher for Excessive Payments to Municipal Court*, ACLU of Colorado (Jan. 13, 2017), https://aclu-co.org/debtors-prison-settlement-aurora-cancels-debt-withdraws-warrants-repays-james-fisher-excessive-payments-municipal-court/.

[43] *Id.*

[44] Martin, *Monetary Sanctions: Legal Financial Obligations*, *supra* note 32, at 475. Credit agencies learn of these debts through direct reports by courts and government entities and entry of civil judgments to collect unpaid fines and fees. *Id.*

[45] Bannon et al., *supra* note 20, at 27 (reporting that at least fifteen states permit garnishment of wages, bank accounts, or liens to collect fines and fees imposed in criminal cases, and several states use tax rebate interceptions for collection).

[46] Beckett & Harris, *supra* note 33, at 518 (2011).

and fees is a basis for revoking probation or parole,[47] which under federal law renders a person ineligible for federal Temporary Assistance to Needy Families funds,[48] as well as Food Stamps,[49] low-income housing and housing assistance,[50] and Supplemental Security Income for elderly and disabled people.[51] In one state, efforts to collect fines and fees have even led to water and electricity being cut off for people unable to pay.[52]

One of the most devastating results of excessive fines and fees is driver's license suspension, which affects millions of people nationwide.[53] In at least 39 states and the District of Columbia, statutes either require or permit driver's license suspension as a sanction for nonpayment, frequently without any hearing or opportunity to demonstrate inability

---

[47] Bannon et al., *supra* note 20, at 28.

[48] 42 U.S.C. § 608(a)9(A) (2012).

[49] 7 U.S.C. § 2015(k)(1) (2015).

[50] 42 U.S.C. § 1437d(l)(9) (2013).

[51] 42 U.S.C. § 1382(e)(4)(A)(ii) (2018).

[52] *SCHR Continues to Challenge LaGrange, GA, Policies That Restrict Access to Basic Utility Services*, Southern Center for Human Rights (March 26, 2018), https://blog.schr.org/2018/03/26/schr-continues-to-challenge-lagrange-ga-policies-that-restrict-access-to-basic-utility-services/ (discussing lawsuit against municipal policy conditioning access to utilities to payment of municipal court fines and fees).

[53] *See* Mario Salas & Angela Ciolfi, *Driven By Dollars: A State-by-State Analysis of Driver's License Suspension Laws for Failure to Pay Court Debt*, Legal Aid Justice Center 1 (2017), https://www.justice4all.org/wp-content/uploads/2017/09/Driven-by-Dollars.pdf.

to pay before the suspension.[54] People prohibited from driving often lose their ability to work, access medical care, and provide for their families.[55] Driver's license suspension can place individuals in the untenable position of either unlawfully driving or losing their jobs—and may subject them to re-incarceration, because driving on a suspended license is itself often a jailable offense.[56]

Across the country, people are incarcerated for inability to pay state and local fines and fees,[57]

---

[54] As of fall 2017, 43 states and the District of Columbia had statutes that required or permitted driver's license suspension for nonpayment of court fines and fees. *See id.* (providing state-by-state analysis). Since then, the practice has been terminated in California, Maine, Mississippi, and Tennessee. *See* Reis Thebault, *In D.C. No More License Suspensions for Drivers With Unpaid Tickets*, Wash. Post (July 12, 2018), https://www.washingtonpost.com/local/dc-politics/in-dc-no-more-suspensions-for-drivers-with-unpaid-tickets/2018/07/12/a72cf13a-85e0-11e8-8553-a3ce89036c78_story.html?utm_term=.b37244c13f1d (describing end of driver's license suspensions for nonpayment of court fines and fees through legislation in Maine, by lawmaker action in California and Mississippi, and by federal court order in Tennessee).

[55] *See* Salas & Ciolfi, *supra* note 53, at 3; *Fowler v. Johnson*, No. 17-11441, 2017 WL 6540926, at *2 (E.D. Mich. Dec. 17, 2017) (finding that "the loss of a driver's license, particularly in a state like Michigan lacking an efficient and extensive public transportation system, hinders a person's ability to travel and earn a living").

[56] *See* Salas & Ciolfi, *supra* note 53, at 6 (discussing prolonged court involvement resulting from initial driver's license suspension for nonpayment of fines and fees); Martin, *Monetary Sanctions: Legal Financial Obligations*, *supra* note 32, at 475.

[57] American Civil Liberties Union, *In for a Penny: The Rise of America's New Debtors' Prisons* (October 2010), https://

despite *Bearden v. Georgia*, 461 U.S. 660, 667–68 (1983), which held that this practice violates due process and equal protection. Since 2010, incarceration for unpaid fines and fees without predeprivation ability-to-pay hearings has been documented in at least fifteen states: Alabama, Arkansas, Colorado, Georgia, Louisiana, Maine, Michigan, Mississippi, Missouri, New Hampshire, Ohio, South Carolina, Tennessee, Texas, and Washington. *See* Appendix A. Those who are incarcerated for fines and fees they cannot afford suffer gravely. In 2016, Twanda Marshinda Brown, an indigent South Carolina mother, fell behind on payments toward fines and fees for driving on a suspended license when the paychecks issued by her employer bounced.[58] Shortly after securing a new job, Ms. Brown was jailed for 57 days because she could not immediately pay $1900.[59] While incarcerated, Ms. Brown lost her job, incurred additional debt, and feared that her 13-year-old son would be taken by child welfare services.[60]

---

www.aclu.org/files/assets/InForAPenny_web.pdf (documenting incarceration for unpaid fines and fees in Michigan, Ohio, Georgia, Louisiana, and Washington).

[58] *Brown v. Lexington County, South Carolina*, No. 3:17-cv-1426-MBS, 2018 WL 1556189, *2 (D.S.C. Mar. 29, 2018); Class Action Second Amended Complaint at 41–45 ¶¶ 137–39, 145, 159–61, *Brown v. Lexington County*, South Carolina, No. 3:17-cv-1426-MBS, (D.S.C. filed June 1, 2017), ECF No. 1.

[59] *Id.* at 45–46 ¶ 164–71.

[60] Twanda Marshinda Brown, *I Was Taken From My Family and Jailed for 57 Days Because I Am Poor*, American Civil Liberties Union (June 1, 2017), https://www.aclu.org/blog/smart

The dramatic rise in fines and fees has undermined exercise of the right to vote. Certain states, including Georgia, require payment of all outstanding court fines and fees before a person convicted of a felony can regain the ability to vote.[61] In Washington, nonpayment of fines and fees can lead to a revocation of voting rights.[62] And in Missouri, Illinois, and New York, people are prohibited from voting while on probation or parole—even if supervision is continued solely to collect fines and fees.[63]

Financial penalties, garnishment, liens, driver's license suspensions, incarceration, and associated loss of employment and wages burden not only the individuals directly affected, but also family members who rely on them for financial support. For example, Washington State authorizes garnishment of up to 25% of the earnings of the spouse of a person with fine or fee debt and seizure of jointly held bank assets, home equity, and tax refunds.[64] These measures reduce overall family income and can harm children's well being.[65]

-justice/sentencing-reform/i-was-taken-my-family-and-jailed-57-days-because-i-am-poor.

[61] Harris, *Monetary Sanctions in the Criminal Justice System*, *supra* note 39, at 14.

[62] *Id.*

[63] *Id.*

[64] Beckett & Harris, *supra* note 33, at 523 (internal citation omitted).

[65] Lawyers' Committee for Civil Rights et. al., *Not Just a Ferguson Problem: How Traffic Courts Drive Inequality in*

Forfeitures, like fines and fees, can also have detrimental consequences for individuals, their families, and communities. Forfeiture practices often "target the poor and other groups least able to defend their interests in forfeiture proceedings."[66] A forfeiture may deprive people of cash needed for basic necessities, a vehicle used for transport to work or school, or even the roof over their heads.[67] Poor and low-income people are "often the most burdened by forfeiture" because "[t]hey are more likely to use cash than alternative forms of payment, like credit cards" and "are more likely to suffer in their daily lives while they litigate for the return of a critical item of property . . . ."[68]

Fines, fees, and forfeitures often disproportionately harm communities of color for reasons that include the longstanding racial and ethnic wealth gap[69] and higher rates of poverty and

---

California 21 (2016), https://www.lccr.com/wp-content/uploads/Not-Just-a-Ferguson-Problem-How-Traffic-Courts-Drive-Inequality-in-California-4.8.15.pdf (describing harm to children living in families below 50% of the federal poverty level).

[66] *Leonard v. Texas*, 137 S. Ct. 847, 848 (2017) (Thomas, J., respecting the denial of certiorari).

[67] *See* Sarah Stillman, *Taken*, The New Yorker (Aug. 12 and 19, 2013), https://www.newyorker.com/magazine/2013/08/12/taken (discussing individual cases).

[68] *Id.*

[69] A 2013 Pew Research Center study of federal data found that the median wealth of white households was 13 times the median wealth of black households, and 10 times the median wealth of Latino households. *See* Rakesh Kochhar & Richard

unemployment.[70] In many jurisdictions, Black people disproportionately experience driver's license suspensions for nonpayment of fines and fees.[71] Such racial disparities contribute to tension between communities of color and law enforcement, as documented in a 2015 Justice Department report.[72] Forfeiture practices can also have a disproportionate impact on communities of color. A federal lawsuit challenging the forfeiture program of the east Texas town of Tenaha and Shelby County, for example, exposed police targeting of racial and ethnic minorities.[73] In 2015, 64% of forfeitures stemming from criminal charges in Alabama concerned Black

---

Fry, *Wealth Inequality Has Widened Along Racial, Ethnic Lines Since End of Great Recession*, Pew Research Center (Dec. 12, 2014), http://www.pewresearch.org/fact-tank/2014/12/12/racial-wealth-gaps-greatrecession.

[70] In 2014, the Pew Research Center found that Black and Latino people were, on average, at least twice as likely to be poor than were white people in the United States. *See On Views of Race and Inequality, Blacks and Whites Are Worlds Apart*, Pew Research Center (June 27, 2016), http://www.pewsocialtrends.org/2016/06/27/on-views-of-race-and-inequality-blacks-and-whites-are-worlds-apart/.

[71] Back on the Road California et al., *Stopped, Fined, Arrested: Racial Bias in Policing and Traffic Courts in California* 27 (2016), http://ebclc.org/wp-content/uploads/2016/04/Stopped_Fined_Arrested_BOTRCA.pdf.

[72] *See* U.S. Dep't of Justice Ferguson Report, *supra* note 14, at 79–81 (detailing how municipal court and policing practices related to fine and fee collection erode community trust in law enforcement).

[73] *See* Second Amended Complaint, *Morrow v. City of Tenaha*, No. 2:08-cv-288-JRG (E.D. Tex. June 30, 2009), ECF No. 43.

defendants, even though Black people comprise approximately 27% of the state's population.[74]

III. UNCHECKED FINES, FEES, AND FORFEITURES UNDERMINE PUBLIC SAFETY BY CREATING INCENTIVES FOR ABUSE AND DIVERTING JUSTICE-SYSTEM RESOURCES TOWARD REVENUE COLLECTION.

Without sufficient legal checks at the state and local level, the rise in fines, fees, and forfeitures has established perverse financial incentives that prioritize collection and asset seizure over measures to promote public safety. This can lead to abuse by government and private actors and redirection of public resources toward revenue generation and away from combatting crime.

a. The Risk of Abuse is High Because Financial Incentives Push State and Local Officials to Maximize Revenue From Fines, Fees, and Forfeitures.

The reliance on fines, fees, and forfeitures for state and local revenue and justice-system funding has created powerful incentives for abuse. The Justice Department's 2015 report highlighted

---

[74] Alabama Appleseed & Southern Poverty Law Center, *Forfeiting Your Rights: How Alabama's Profit-Driven Civil Asset Forfeiture Scheme Undercuts Due Process and Property Rights* 5, https://www.splcenter.org/sites/default/files/com_civil_asset_forfeiture_report_finalnocrops.pdf.

Ferguson, Missouri's dependence on fines and fees for municipal revenue, and the resulting misdirection of policing.[75] There, the city finance director explicitly urged both the police chief and the city manager to write more tickets in order to fill municipal coffers.[76] The Justice Department found that "[t]he City's emphasis on revenue generation has a profound effect on [the Ferguson Police Department's] approach to law enforcement," producing "aggressive enforcement of Ferguson's municipal code, with insufficient thought given to whether enforcement strategies promote public safety or unnecessarily undermine community trust and cooperation."[77] The unchecked focus on revenue generation resulted in chronic violations of First, Fourth, and Fourteenth Amendment rights.[78]

Ferguson is not alone. The overreliance of state and local governments and justice-system stakeholders on fine and fee revenue creates powerful incentives to impose and collect excessive monetary penalties—regardless of an individual's ability to pay. For example, a federal court recently ruled that the New Orleans Parish Criminal District Court ("NOPCD") has "an institutional conflict of interest" in making determinations about defendants' ability to pay because fine and fee proceeds are funneled directly into a Judicial

---

[75] U.S. Dep't of Justice Ferguson Report, *supra* note 14, at 9.

[76] *Id.* at 6.

[77] *Id.* at 2.

[78] *Id.* at 15–78.

Expense Fund controlled by judges.[79] The court also found that NOPCD had "a policy or practice" of not inquiring into criminal defendants' ability to pay before imprisonment for nonpayment of court debts.[80] Such financial conflicts of interest result in shocking abuse. In 2017, a Mississippi judge entered an order prohibiting a mother from having contact with her four-month-old baby until she paid her court fees in full, and was reported to have taken similar action with respect to other parents.[81]

Similar abuses occur when municipalities enlist for-profit companies to boost revenue by using pay-only probation to collect fines and fees. A 2014 report exposed the use of arrest and jail by these companies in Georgia, Alabama, and Mississippi when seeking to collect from impoverished probationers.[82] Because fees constitute these companies' sole source of revenue, employees face an inherent conflict of interest: helping courts identify indigent people whose fines and fees should be waived, reduced, or converted to alternatives directly

---

[79] Order and Reasons, *Cain v. City of New Orleans*, No. 2:15-cv-04479-SSV-JCW(E.D. La. Aug. 2, 2018), ECF No. 318., No. 2:15-cv-04479-SSV-JCW(E.D. La. Aug. 2, 2018), ECF No. 318.

[80] *Id.* at 23.

[81] *MacArthur Justice Center Initiated Demands that Led to Mississippi Youth Court Judge Resigning*, The University of Mississippi School of Law (Oct. 26, 2017), https://law.olemiss.edu/macarthur-justice-center-initiated-demands-that-led-to-mississippi-youth-court-judge-resigning.

[82] Human Rights Watch, *supra* note 37, at 16.

hurts their employer's bottom line.[83] Numerous federal lawsuits have challenged resulting abuses.[84]

Forfeitures also create profound incentives for abuse.[85] "Forfeiture laws typically place few limits on law enforcement spending of forfeiture proceeds and impose even fewer checks to ensure that expenditures are proper or legal."[86] Local agencies that control seized assets have engaged in clear abuse. Several victims of the Tenaha, Texas forfeiture program were threatened with the removal of their children to foster care if they refused to part with their cash and valuables—and in at least one instance, one man's 16-month-old son was seized along with his money.[87] A small vice squad based in Bal Harbor, Florida—a town of 3,300 residents—generated nearly $50 million through civil forfeitures

---

[83] *See id.* at 2–3, 42–45.

[84] *See, e.g., Rodriguez v. Providence Cmty. Corr.*, 155 F. Supp. 3d 758, 770–771 (M.D. Tenn. Dec. 17, 2015) (finding that a for-profit collection company's failure to inquire into ability to pay before stacking fees and effectively revoking probation raised due process and equal protection concerns); *Ray v. Judicial Corr. Servs.*, No. 2:12-CV-02819-RDP, 2013 WL 5428395, at *3–4, (N.D. Ala. Sept. 26, 2013) (describing claims against for-profit company for post-judgment probationary program leading to incarceration without pre-deprivation ability-to-pay hearing); Complaint, *Kennedy v. Biloxi*, No. 1:15-cv-348-HSO-JCG, at *2–3, 5–6 (S.D. Miss. Oct. 21, 2015), ECF No.1 (bringing constitutional claims against for-profit probation company for unlawful fine and fee collection practices).

[85] Carpenter, *supra* note 5.

[86] *Id.* at 7.

[87] *See* Second Amended Complaint, *Morrow v. City of Tenaha*, *supra* note 73.

in three years, and then used the money for luxury car rentals, first-class plane tickets, a $100,000 police boat, and a $20,000 drug-prevention beach party.[88] Out of the nearly $3.4 million spent by the Oklahoma Highway Patrol under the Equitable Sharing Program during a three-year period, $1.9 million constituted unallowable and unsupported expenditures relating to salaries, overtime pay, construction, contractor fees, and the use of two pickup trucks by non-law enforcement personnel.[89]

The financial incentives driving fines, fees, and forfeitures also divert resources away from legitimate public safety measures.[90] A 2016 study found that every one percent increase in the share of a jurisdiction's revenue from fines, fees, and forfeitures "is associated with a statistically and substantively significant 3.7 percentage point decrease in the violent crime clearance rate."[91] In Ferguson, Missouri, the pressure to raise revenue

---

[88] Stillman, *Taken*, *supra* note 67.

[89] Robert O'Harrow et al., *Asset Seizures Fuel Police Spending*, Wash. Post (Oct. 11, 2014), https://www.washingtonpost.com/sf/investigative/2014/10/11/asset-seizures-fuel-police-spending/?noredirect=on&utm_term=.d985456fadcc.

[90] *Shackled to Debt*, *supra* note 2, at 6–7; *see also* 2011–2012 Conference of State Court Administrators, *2011-2012 Policy Paper: Courts are Not Revenue Centers* (2012), https://cosca.ncsc.org/~/media/Microsites/Files/COSCA/Policy%20Papers/CourtsAreNotRevenueCenters-Final.ashx.

[91] Rebecca Goldstein et al., *Exploitative Revenues, Law Enforcement, and the Quality of Government Service* 4 (2017), http://www.law.nyu.edu/sites/default/files/upload_documents/YOU_policing.pdf.

through unnecessary traffic tickets and arrests siphoned resources from responding to complaints and charges of officer misconduct and from implementing community policing strategies.[92] In 2013, the American Association of Motor Vehicle Administrators concluded that driver's license suspensions for people unable to pay traffic fines and fees undermine safety because "the costs of arresting, processing, administering, and enforcing social non-conformance related driver license suspensions create a significant strain on budgets and other resources and detract from highway and public safety priorities."[93]

Probation and parole officers in several states have explicitly acknowledged that their role as debt collectors is at odds with their main purpose: to ensure that people on supervised release do not commit new offenses. [94] A 2010 study of collection practices of fifteen state courts found that all of the states required courts and probation and parole officers to be involved in fine and fee collection.[95] Virginia abolished its parole supervision fee in part due to parole officers' objection to their role in

---

[92] U.S. Dep't of Justice Ferguson Report, *supra* note 14, at 79.

[93] American Association of Motor Vehicle Administrators, *Best Practices Guide to Reducing Suspended Drivers* 4 (2013), https://www.aamva.org/Suspended-and-Revoked-Drivers-Working-Group/.

[94] Bannon et al., *supra* note 20, at 31.

[95] *Id.* at 30 n.118 (citing the statutory codes for 15 states).

collections.[96] As one official stated, "parole officers are not loan sharks."[97] Expansive civil forfeiture practices similarly divert prosecutorial and police resources toward seizures of property and cash and litigating *in rem* civil forfeiture proceedings—and away from crucial public safety functions, including investigative police fieldwork, litigating criminal cases, and testifying in criminal proceedings.[98] Excessive fines, fees, and forfeitures thus lead to abuse at the expense of public safety.

b. Unchecked Fines, Fees, and Forfeitures Promote Recidivism.

A consensus has emerged in recent decades that assisting people who have contact with the criminal justice system with reintegration into their families and communities reduces recidivism and promotes public safety.[99] In 2008, Congress enacted the Second Chances Act with bipartisan support to reduce recidivism and improve outcomes for people

---

[96] *Id.* at 31 (citing an interview with Walter Pulliam, Chief of Operations, Virginia Dep't of Corrections, Divisions of Community Corrections (Jan.8, 2009)).

[97] *Id.*

[98] Note, *How Crime Pays: The Unconstitutionality of Modern Civil Asset Forfeiture as a Tool of Criminal Law Enforcement*, 131 Harv. L. Rev. 2387 (June 8, 2018), https://harvardlawreview.org/wp-content/uploads/2018/06/2387-2408_Online.pdf.

[99] The Council of State Governments & The National Reentry Resource Center, *Making People's Transition from Prison and Jail to the Community Safe and Successful: A Snapshot of National Progress in Reentry* 2 (2017), https://csgjusticecenter.org/wp-content/uploads/2017/06/6.12.17_A-Snapshot-of-National-Progress-in-Reentry.pdf.

leaving prisons, jails, and juvenile facilities.[100] More than $540 million in federal funds have been spent toward these programs,[101] and nearly half of U.S. governors cited re-entry as a priority for their states in 2016 and 2017.[102] These investments support employment training, education, mentoring, services to strengthen family relationships, and housing programs.[103]

Unchecked fines, fees, and forfeitures directly impede these efforts. People in contact with the criminal justice system are disproportionately indigent and likely to owe significant fines and fees.[104] At the same time, they face considerable barriers to finding and keeping a job.[105] They confront the difficult choice of using scarce resources to pay fines and fees as opposed to paying for food, medicine, rent, and child support; even a $50 monthly payment can divert a significant share of

---

[100] *Id.*

[101] *Id.*

[102] *Id.* at 4 (describing governors' identification of re-entry programs as a priority in their State of the State addresses).

[103] *See* Bureau of Justice Assistance, U.S. Dep't of Justice, *Second Chance Act Fact Sheet* (Jan. 2016), https://csgjusticecenter.org/wp-content/uploads/2014/08/SCA_Fact_Sheet.pdf; The Council of State Governments, *Reentry Matters: Strategies and Successes of Second Chance Act Grantees Across the United States* (Nov. 2013), https://csgjusticecenter.org/wp-content/uploads/2013/11/ReentryMatters.pdf.

[104] *See* Bureau of Justice Assistance, *Contracting for Indigent Defense Services*, *supra* note 33.

[105] *Shackled to Debt*, *supra* note 2, at 9.

monthly income.[106] And as detailed above, when people seeking to disentangle themselves from the criminal justice system cannot pay, a parade of consequences undermining economic security may follow—including driver's license suspension, liens, wage garnishment, tax rebate interception, loss of federal benefits, damaged credit, and even incarceration.[107] Forfeiture can also strip people of money needed for rent, medicine, child care or other expenses, or cars required to get to school or work.[108] Excessive fines, fees and forfeitures thus subvert the ability of people to sustain their livelihoods while attempting to leave the criminal justice system, undermining efforts to combat recidivism.[109]

IV. THE EXCESSIVE FINES CLAUSE PROVIDES A CRUCIAL AND NECESSARY CHECK AGAINST ABUSIVE FINES, FEES, AND FORFEITURES IMPOSED BY STATE AND LOCAL GOVERNMENT.

The Excessive Fines Clause is a constitutional provision expressly intended to address abuses such

---

[106] Beckett & Harris, *supra* note 33, at 517.

[107] *See supra* discussion Section II.

[108] *See* Stillman, *Taken*, *supra* note 67.

[109] *See* Lawyer's Committee for Civil Rights, *supra* note 65, at 20 (finding that "[b]y impeding efforts at employment, license suspensions decrease access to legitimate work opportunities and pose a threat to successful reentry for people who are attempting to reintegrate into their communities"); Bannon et al., *supra* note 20.

as those discussed above. While not every practice described would necessarily violate the clause, it was designed to shield people from the potentially devastating monetary sanctions and forfeitures the government could otherwise impose. *See United States v. Bajakajian*, 524 U.S. 321, 328 (1998) ("The Excessive Fines Clause . . . limits the government's power to extract payments, whether in cash or in kind, as punishment for some offense.") (internal quotation marks and citation omitted). In particular, it was designed to forestall sanctions that would be disproportionate to the gravity of an offense or would deprive individuals of their livelihood. If incorporated and applied to the States, the clause will fulfill its original purpose of ensuring that punishments are not overly harsh, and that individuals are not deprived of "liberty . . . or property, without due process of law." U.S. Const. amend. XIV, § 1.

a. The Excessive Fines Clause is a Fundamental Right Incorporated in the Due Process Clause of the Fourteenth Amendment.

The right to be free from excessive monetary penalties is "fundamental to the American scheme of justice," *Duncan v. Louisiana*, 391 U.S. 145, 149 (1968), and lies squarely at the heart of the liberty and property interests protected by the Fourteenth Amendment. *See also McDonald v. City of Chicago, Ill.*, 561 U.S. 742, 764 (2010). The deep historical roots of the right are well-established; the Court has already recognized that the Excessive Fines Clause traces back to the Magna Carta. *See Bajakajian*, 524 U.S. at 335; *Browning-Ferris Indus. of Vermont, Inc.*

v. Kelco Disposal, Inc., 492 U.S. 257 (1989). At the time of the U.S. Constitution's ratification, most States had analogues to the Excessive Fines Clause delineated in State Constitutions or Declarations of Rights.[110]

Moreover, incorporation furthers the purposes of both the Eighth and Fourteenth Amendments in three ways.

First, the Court has treated as fundamental those rights that protect individuals in the criminal justice system. "From the very beginning, our state and national constitutions and laws have laid great emphasis on procedural and substantive safeguards designed to assure fair trials before impartial tribunals in which every defendant stands equal before the law." *Gideon v. Wainwright*, 372 U.S. 335, 344 (1963); *see also Mapp v. Ohio*, 367 U.S. 643, 656 (1961) ("This Court has not hesitated to enforce as strictly against the States as it does against the Federal Government . . . the rights to notice and to a fair, public trial[.]"); *Duncan*, 391 U.S. at 155 ("The guarantees of jury trial in the Federal and State Constitutions reflect a profound judgment about the way in which law should be enforced and justice administered.").

The right to be free from excessive fines directly mirrors other criminal justice protections that this Court has already deemed fundamental, including the two other clauses of the Eighth Amendment, *Schilb v. Kuebel*, 404 U.S. 357 (1971);

---

[110] Amici concur with the detailed historical analysis submitted to the Court by Petitioners. *See, e.g.*, Pet'r's Br. 15–16.

Robinson v. California, 370 U.S. 660, 82 (1962). It would make little sense to sever the Excessive Fines Clause from the previously incorporated provisions of the Eighth Amendment. *Cf. Ingraham v. Wright*, 430 U.S. 651, 664 (1977) (observing that the Eighth Amendment placed "parallel limitations" on "[b]ail, fines, and punishment").

As this brief documents, there is a clear need for constitutional protections in this area. State and local fines, fees, and forfeitures can become tantamount to life sentences for poor and low-income people who struggle for years to discharge debt accumulated for even minor offenses. These sanctions affect many aspects of an individual's life, including economic security, ability to drive, to vote—even physical liberty. Fines, fees, and forfeitures thus have a particularly severe impact on the poor. The Court "has long been sensitive to the treatment of indigents in our criminal justice system," *Bearden*, 461 U.S. at 664, and has carved out protections to "mitigate the disparate treatment of indigents in the criminal process." *Williams v. Illinois*, 399 U.S. 235, 241 (1970). The rights protected by the Excessive Fines Clause overlap with other constitutional rights of indigent defendants that are already enforceable against the States, such as the prohibition against jailing people who cannot pay fines and fees. *See Bearden*, 461 U.S. at 664.

Second, the Excessive Fines Clause is fundamental to the American system of justice because it provides a bulwark against abusive sanctions driven by government self-interest. The Court has expressly recognized this risk of abuse when incorporating the prohibition against taking

private property without just compensation. *See Chicago, B. & Q.R. Co. v. City of Chicago*, 166 U.S. 226, 236 (1897) ("[A]lmost all other rights would become worthless if the government possessed an uncontrollable power over the private fortune of every citizen.") (citation omitted). "[T]he primary focus of the Eighth Amendment was the potential for governmental abuse of its 'prosecutorial' power[.]" *Browning-Ferris*, 492 U.S. at 266. And the specific purpose of the Eighth Amendment's Excessive Fines and Cruel and Unusual Punishment Clauses "was to limit the government's power to punish." *Austin v. United States*, 509 U.S. 602, 609 (1993). If incorporated, the Excessive Fines Clause can help check the powerful financial incentives for state and local officials to abuse people entangled in the justice system.

The importance of constitutional protection against excessive punishment is magnified for monetary sanctions in particular because "the State stands to benefit" from their imposition:

> There is good reason to be concerned that fines, uniquely of all punishments, will be imposed in a measure out of accord with the penal goals of retribution and deterrence. Imprisonment, corporal punishment, and even capital punishment cost a State money; fines are a source of revenue. . . . [I]t makes sense to scrutinize governmental action more closely when the State stands to benefit.

Harmelin v. Michigan, 501 U.S. 957, 978 n.9 (1991). This is why, of the many types of punishment

available to the government, the Framers singled out monetary sanctions for particular scrutiny and regulation.

The temptation to generate revenue through fines, fees, and forfeitures is actively fueling abusive practices across the country. *See supra* § III.A. For example, Ferguson's unchecked focus on collections contributed to the rampant use of warrants to coerce payments and additional financial penalties for, and incarceration of, people who could not afford to pay.[111]

Third, a central responsibility of the judiciary within our constitutional system is to evaluate the propriety of sentences in proportion to the characteristics of the offense and the circumstances of the offender. There should be no debate that the imposition of fines, fees, and forfeitures "involve[s] matters as to which judges possess a comparative expertise, by virtue of their close familiarity with the justice system and its operation." *McDonald*, 561 U.S. at 921 (Stevens, J., dissenting). While the legislature typically retains authority to set fines and fees and delineate the elements of offenses, judges are entrusted with evaluating a sentence in relation to a particular individual. Incorporation of the Excessive Fines Clause would therefore complement the comparative advantages and expertise of the judiciary with respect to the propriety of fines in particular circumstances.

---

[111] *See* U.S. Dep't of Justice Ferguson Report, *supra* note 14, at 4, 42, 53–57.

b. The Excessive Fines Clause Properly Considers an Individual's Financial Circumstances in Assessing Whether a Fine is Excessive.

As discussed *supra*, the burden of increased government reliance on fines, fees, and forfeitures to generate revenue has fallen predominantly on low-income people—those already disproportionately entangled in the criminal justice system and least able to shoulder the costs. The Excessive Fines Clause can help check these abuses because, properly interpreted, it considers the impact of monetary sanctions and forfeitures on the individual. A fine, fee, or forfeiture that is not excessive as to a wealthy individual may be excessive as to a poor or low-income individual, just as incarceration for failure to pay a fine may be permissible for the wealthy, but not for those who cannot afford to pay.

The Excessive Fines Clause properly considers an individual's financial circumstances in determining whether a fine, fee, or forfeiture is excessive. The Court holds that "[t]he touchstone of the constitutional inquiry under the Excessive Fines clause is the principle of proportionality[.]" *Bajakajian*, 524 U.S. at 334. *Bajakajian* examined the predecessors to the Clause in the English Bill of Rights and the Magna Carta, which required that fines "be proportioned to the offense and that *they should not deprive a wrongdoer of his livelihood.*" 524 U.S. at 335 (emphasis added). In *Bajakajian*, the Court left open the question of whether inquiring into an individual's financial circumstances is required because the defendant had "not argue[d]

that his wealth or income are relevant to the proportionality determination or that full forfeiture would deprive him of his livelihood . . . and the District Court made no factual findings in this respect." 524 U.S. at 340 n.15.

Lower federal courts have concluded that judges must consider an individual's financial circumstances when evaluating an Excessive Fines claim. The First Circuit, for example, recognized that "the notion that a forfeiture should not be so great as to deprive a wrongdoer of his or her livelihood is deeply rooted in the history of the Eighth Amendment," and held that a district court erred in failing to consider whether a forfeiture would "deprive a defendant of his livelihood." *United States v. Levesque*, 546 F.3d 78, 83–84 (1st Cir. 2008); *see also United States v. Fogg*, 666 F.3d 13 (1st Cir. 2009) (proper question under Excessive Fines analysis is whether fine threatens to deprive defendant of future livelihood).

The Second Circuit has adopted a similar approach, holding that "courts may consider . . . whether [a] forfeiture would deprive the defendant of his livelihood, *i.e.*, his future ability to earn a living." *United States v. Viloski*, 814 F.3d 104, 111 (2d Cir. 2016) (internal quotation marks and citation omitted), *cert. denied*, 137 S. Ct. 1223 (2017). The Ninth Circuit has also held that in assessing the proportionality of a forfeiture, a court should consider "the hardship to the defendant, including the effect of the forfeiture on a defendant's family or financial condition." *United States v. 6380 Little Canyon Rd.*, 59 F.3d 974, 985 (9th Cir. 1995), *superseded in part by Bajakajian*, 524 U.S. at 336;

see also United States v. King, 231 F. Supp. 3d 872, 904–05 (W.D. Okla. 2017) (recognizing that Excessive Fines Clause analysis requires consideration of whether a forfeiture "is grossly disproportionate to the defendant's offense" and would ruin "the defendant's future ability to provide a livelihood").[112]

These cases recognize the principle that fines, fees, and forfeitures cannot pass constitutional muster when they deprive individuals of their ability to maintain a livelihood—a principle amply supported by antecedents to the Excessive Fines Clause.[113] That is too often precisely the effect of fines, fees, and forfeitures on poor and low-income

---

[112] Other courts have applied different analyses depending on whether the penalty is a fine, forfeiture, or restitution. *Compare, e.g., United States v. Lippert*, 148 F.3d 974, 978 (8th Cir. 1998) ("[I]n the case of fines, as opposed to forfeitures, the defendant's ability to pay is a factor under the Excessive Fines Clause") *with United States v. Smith*, 656 F.3d 821, 828 (8th Cir. 2011) (deeming "defendant's inability to satisfy a forfeiture at the time of conviction" not relevant to constitutional analysis). The Eleventh Circuit has rejected consideration of an individual's financial circumstances under the Excessive Fines Clause. *See United States v. Seher*, 562 F.3d 1344, 1371 (11th Cir. 2009).

[113] The brief submitted by legal scholars of the Eighth Amendment provides compelling historical data in support of this principle. *See* Brief of Amici Curiae Eighth Amendment Scholars at 2–3, 23, 27–30 (discussing "substantial evidence" from the Magna Carta, common law, English Bill of Rights, and early State constitutions that protection from excessive fines guards against penalties that "exceed an offender's ability to pay" and would deprive the individual of "a minimum core level of economic subsistence").

people. As detailed *supra*, Mr. Fisher of Colorado struggled for nearly four years to pay approximately $1500 arising from two minor open container tickets and a traffic citation, but still owed more than $800. He made these efforts despite the fact that he was homeless and could secure only intermittent work as a day laborer. Although some people could pay $678 in fines without hesitation, the enduring financial burden on Mr. Fisher from these fines and accumulating collection fees was both economically catastrophic and fundamentally unjust in light of his circumstances.

CONCLUSION

In light of the abuses detailed above, the Court should hold that the Excessive Fines Clause is incorporated via the Fourteenth Amendment and applies to the States.

Respectfully submitted,

Charles Duan
Nila Bala
R Street Institute
1212 New York Ave. NW, Suite 900
Washington, DC 20005

Lisa Foster
Joanna Weiss
Fines and Fees Justice Center
185 West Broadway, C-538
New York, NY 10013

Samuel Brooke
Danielle E. Davis
The Southern Poverty Law Center
400 Washington Ave.
Montgomery, AL 36104

Counsel for Amici Curiae

Nusrat J. Choudhury
Counsel of Record
Orion Danjuma
Amreeta Mathai
Dennis D. Parker
Mariana Kovel
Ezekiel Edwards
American Civil Liberties Union Foundation
125 Broad Street, 18th Floor
New York, NY 10004
(212) 549-2500
nchoudhury@aclu.org

David Cole
American Civil Liberties Union Foundation
915 15th St. NW
Washington, DC 20005

September 2018

APPENDIX

STATES WITH DOCUMENTED INCARCERATION OF INDIVIDUALS FOR UNPAID COURT FINES AND FEES

Since 2010, cases in which individuals were incarcerated for unpaid court fines and fees without pre-deprivation ability-to-pay hearings have been documented in the following fifteen states:

Alabama:

> *Ray v. Judicial Corr. Servs.*, No. 2:12-cv-02819-RDP, 2013 WL 5428395, at *3–5 (N.D. Ala. Sept. 26, 2013); *Cleveland v. City of Montgomery*, Nos. 2:13-cv-732–MHT, 2:13-cv-733–MHT, 2014 WL 6461900, at *6–7 (M.D. Al. Nov. 17, 2014) (order enforcing settlement agreement to resolve plaintiff's allegations of unlawful incarceration for inability to pay fines and fees to municipal court and probation company).

Arkansas:

> Order, *Dade v. City of Sherwood, Arkansas*, No. 4:16-cv-602-JM-JJV (E.D. Ark. Nov. 11, 2017) (retaining jurisdiction to enforce settlement agreement resolving plaintiffs' allegations of unlawful incarceration for inability to pay fines and fees to municipal court).

Colorado:

> *Debtors' Prisons*, ACLU of Colorado, http://aclu-co.org/court-cases/debtors-prisons

(compiling 2013 letters to municipalities concerning illegal jailing of people unable to pay fines and fees); Christopher N. Osher, *Colorado lawmakers pass bill to close "debtors' prison" loophole*, The Denver Post, https://www.denverpost.com/2016/05/02/colorado-lawmakers-pass-bill-to-close-debtors-prison-loophole/.

Georgia:

Complaint, *Thompson v. Dekalb County*, No. 1:15-cv-280-TWT (N.D. Ga. Jan. 29, 2015), https://www.aclu.org/sites/default/files/field_document/2015.01.29_filed_thompson_complaint.pdf.

Louisiana:

Cain v. New Orleans, No. 2:15-cv-04479-SSV-JCW at 1 (E.D. La. Aug. 3, 2018) (holding that judges of the Orleans Parish Criminal District Court "have a policy or practice of not inquiring into criminal defendants' ability to pay before those individuals are imprisoned for nonpayment of court debts"); ACLU of Louisiana, *Louisiana Debtors' Prisons: An Appeal To Justice* (2015), https://www.laaclu.org/sites/default/files/field_documents/2015_Report_Louisiana_Debtors_Prisons_0.pdf.

Maine:

Scott Dolan, *Taxpayers lose as Maine counties jail indigents over unpaid fines*, Portland Press Herald (May 31, 2015), https://www.pressherald.com/2015/05/31/taxpayers-lose-as-maine-counties-jail-indigents-

over-unpaid-fines/; The BDN Editorial Board, *Keeping poor in jail isn't justice, worsens overcrowding*, Bangor Daily News (Jan. 26, 2016), http://bangordailynews.com/2016/01/26/opinion/editorials/keeping-poor-in-jail-isnt-justice-worsens-overcrowding/.

Michigan:

Complaint for Superintending Control, *In re Donna Elaine Anderson*, Circuit Court Case No. 15-2380-AS (Cir. Court County of Macomb Jul. 9, 2015), http://www.aclumich.org/sites/default/files/Motion%20for%20Class%20Cert%20as%20filed.pdf.

Mississippi:

Class Action Complaint, *Kennedy v. City of Biloxi*, No. 1:15-cv-00348-HSO-JCG (S.D. Miss. Oct. 21, 2015), https://www.aclu.org/kennedy-v-city-biloxi-complaint; Class Action Complaint, *Bell v. City of Jackson*, No. 3:15-cv-732-TSL-RHW (S.D. Miss. Oct. 9, 2015), https://www.macarthurjustice.org/wp-content/uploads/2018/07/Bell-v.-City-of-Jackson.pdf.

Missouri:

Class Action Complaint, *Fant v. Ferguson*, No. 4:15-cv-00253 (E.D. Mo. Feb. 8, 2015), http://www.archcitydefenders.org/wp-content/uploads/2015/06/Complaint-Ferguson-Debtors-Prison.pdf.

New Hampshire:

ACLU of New Hampshire, *Debtors' Prisons In New Hampshire* (2015), http://aclu-nh.org/wp-content/uploads/2015/09/Final-ACLU-Debtors-Prisons-Report-9.23.15.pdf.

Ohio:

ACLU of Ohio, *The Outskirts of Hope: How Ohio's Debtors' Prisons are Ruining Lives and Costing Communities* (2013), http://www.acluohio.org/wp-content/uploads/2013/04/TheOutskirtsOfHope2013_04.pdf.

South Carolina:

Brown v. Lexington County, South Carolina, No. 3:17-cv-1426-MBS, 2018 WL 1556189, *2–5 (D.S.C. Mar. 29, 2018).

Tennessee:

Class Action Complaint, *Rodriguez v. Providence Community Corr. Inc.*, No. 3:15-cv-01048 (M.D. Tenn. Oct. 1, 2015), https://equaljusticeunderlaw.org/s/complaint_file_stamped.pdf.

Texas:

Class Action Complaint, *West v. City of Sante Fe*, No. 3:16-cv-00309 (S.D. Tex. Nov. 3, 2016), https://www.aclutx.org/sites/default/files/santa_fe_complaint_final_11-3-2016.pdf; ACLU of Texas, *No Exit-Texas, Modern-Day Debtors' Prisons and the Poverty Trap* (2016), https://www.aclutx.org/sites/default/files/no_exit_texas_-_modern-

day_debtors_prisons_and_the_poverty_trap_11-2016.pdf (describing unlawful jailing of people unable to pay).

Washington:

Complaint for Declaratory and Injunctive Relief, *Fuentes v. Benton County, Washington*, No. 15-2-02976-1 (Sup. Ct. Wash. Yakima County Oct. 6, 2015), https://www.aclu.org/sites/default/files/field_document/fuentes_v._benton_county_-_complaint.pdf; ACLU of Washington and Columbia Legal Services, *Modern-Day Debtors' Prisons: The Ways Court-Imposed Debts Punish People For Being Poor* (2014), https://aclu-wa.org/sites/default/files/attachments/Modern%20Day%20Debtor%27s%20Prison%20Final%20%283%29.pdf.